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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
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10 ABANTE ROOTER AND PLUMBING,
11 INC., individually and on behalf of all others
12 similarly situated,

13 Plaintiff,

14 v.

15 TOTAL MERCHANT SERVICES, LLC, a
16 Delaware limited liability company,

17 Defendant.

Case No. 3:19-cv-05711-EMC

**JOINT CASE MANAGEMENT
STATEMENT**

18 Plaintiff Abante Rooter and Plumbing, Inc. (“Plaintiff” or “Abante”) and Defendant Total
19 Merchant Services, LLC (“Defendant” or “TMS”) (collectively Plaintiff and Defendant are
20 referred to as the “Parties”) submit this Joint Case Management Statement in accordance with the
21 Court’s June 25, 2020 Order (dkt. 49).

22 **1. Discovery Status**

23 Plaintiff’s Statement: For brevity, Plaintiff will limit its statement to outstanding discovery
24 matters. A complete restatement of all discovery taken to date can be found in Plaintiff’s Motion
25 for Extension of All Remaining Discovery Deadlines and the declaration attached thereto. (*See*
26 Dkts. 57, 57-1.)

27 The following discovery matters remain outstanding. Plaintiff served its Notice of Rule
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1 30(b)(6) Deposition on Defendant TMS on August 24, 2020. The parties have not yet agreed to a
2 date for the deposition, however, it is likely to take place in early-November. On August 31,
3 2020, Plaintiff served a third set of discovery requests on TMS. TMS's deadline to respond is
4 September 30, 2020. Plaintiff has also not yet been deposed in this litigation.

5 There also remains considerable discovery relating to outstanding subpoenas served by
6 Plaintiff. As this Court is well aware, Plaintiff has been working for the past seven months to
7 effectuate subpoenas directed to Triumph Merchant Solutions, LLC ("Triumph"). (*See* Dkt. 57-1,
8 ¶¶ 9-17.) Despite initially ignoring the subpoenas, Plaintiff has now received Triumph's
9 document production and has scheduled an inspection of its dialing system and a deposition of its
10 corporate representative for September 24, 2020 and September 25, 2020 respectively.

11 Plaintiff also served subpoenas to testify and to produce documents on Christopher Judy,
12 another agent of TMS that placed calls to Plaintiff. After requesting an extension, Mr. Judy
13 produced his document production on September 11, 2020. Mr. Judy's document production
14 identified Leutrim Ismajli d/b/a Purple Advertising Agency ("Purple Advertising"), a third-party
15 marketer, as the individual who placed the calls to Plaintiff on behalf of Mr. Judy and TMS.
16 Purple Advertising is located in Prishtine, Kosovo and no longer maintains a relationship with
17 Mr. Judy. Plaintiff's counsel is evaluating how to obtain the call records placed on behalf of Mr.
18 Judy and TMS. Plaintiff's counsel is also still working to obtain dates of availability for a
19 deposition from Mr. Judy that work for all parties.

20 Additionally, Plaintiff served a Subpoena to Produce Documents, Information, or Objects
21 or to Permit Inspection of Premises in a Civil Action on PoundTeam Incorporated
22 ("PoundTeam"). On August 25, 2020, Triumph, for the first time, identified PoundTeam as the
23 third-party that supposedly built and hosts the server that operates its dialing system. Triumph has
24 represented that server is located in Tijuana, Mexico. PoundTeam has not yet reached out to
25 Plaintiff's counsel regarding its production or its availability for an inspection.

26 Plaintiff will also need to engage in expert discovery related to class certification. Here, an
27 expert is necessary to review the Triumph calling records to identify the individual calls that were
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placed to cellphones and those that were directed to landline telephone numbers. Further, an expert may be necessary to opine as to the ascertainability of individual class members.

Defendant's Statement: Plaintiff and Defendant have engaged in, and continue to engage in, written discovery concerning the claims and defenses asserted in this action. Defendant may issue third party discovery depending upon the results of its analysis of the documents produced by Triumph, Mr. Judy, and any other third parties who already have been served with subpoenas in this action.

The parties have communicated concerning potential dates to conduct party depositions. Similar to Plaintiff, Defendant anticipates those party depositions will occur in the month of November.

Finally, Defendant will need to engage an expert to analyze, *inter alia*, calling records and other relevant documents produced in this action by third parties, including Triumph and/or Mr. Judy, and to address any expert reports and opinions filed or otherwise relied upon by Plaintiff in this action.

2. Settlement Efforts

The Parties are scheduled to attend a full-day mediation session overseen by the Hon. Edward A. Infante (Ret.) of JAMS on September 22, 2020.

Dated: September 17, 2020

/s/ Patrick H. Peluso
Counsel for Plaintiff

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Dated: September 17, 2020

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SIGNATURE CERTIFICATION

Pursuant to Civil L.R. 5-1(i)(3) of the Electronic Case Filing Administrative Policies and Procedures Manual, I hereby certify that the content of this document is acceptable to counsel for Defendant and that I have obtained authorization to affix his or her electronic signature to this document.

By: /s/ Patrick H. Peluso
Patrick H. Peluso

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above papers was served upon counsel of record by filing such papers via the Court's ECF system on September 17, 2020.

/s/ Patrick H. Peluso